



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

November 29, 1960

Honorable H. D. Dodgen  
Executive Secretary  
Game and Fish Commission  
Walton Building  
Austin, Texas

Opinion No. WW-965

Re: (1) Construction of House Bill 12, Acts 56th Legislature 1959, Article 4075b, Vernon's Annotated Civil Statutes, relative to size of trawl that may be lawfully used for sports fishermen in the taking of shrimp by Sports Bait-Shrimp Trawl; (2) and the lawful means and method of the taking of shrimp other than by trawls.

Dear Mr. Dodgen:

You have requested an opinion of this Department on the above subject matter and your inquiry relates to the shrinkage allowance on Sports Bait-Shrimp Trawls as compared to shrinkage allowed on Commercial Bay-Bait Shrimp Trawls and your question number 2 posing the question as to whether any other type of seines or nets other than trawls could be lawfully used for the taking of shrimp.

The Legislature passed the Texas Shrimp Conservation Act, House Bill 12, ch. 187, Acts 1959, 56th Legislature, which original bill was enacted into law and is now carried in Vernon's Annotated Civil Statutes as Article 4075b. In such law the Legislature in Section 1 provided in part as follows:

"Section 1. This Act shall be known as the 'Texas Shrimp Conservation Act' and it is hereby declared by the Legislature of the State of Texas as to be the public policy of this State that the Shrimp resources of the State of Texas be conserved and protected from depletion and waste in order that the people of Texas and their posterity may enjoy the most reasonable and equitable privileges in the ownership and taking of such shrimp resources, and that the shrimp industry of Texas be protected from unlawful encroachment and be promoted and fostered consistent with the general good of the people of this State and to those ends, and in the interest of achieving fair, impartial, and uniform law enforcement, it is further declared by the Legislature of Texas to be the Public Policy of this State that any and all laws, acts, bills, rules, regulations, proclamations or orders relating to shrimp or the shrimp industry shall be carried out under this Act, any other provision of the law to the contrary notwithstanding; provided however nothing in this Act shall be construed to affect or repeal any existing laws that close any bay or other area of the inside waters

to the taking or catching of shrimp throughout the entire year." [Emphasis added]

Pursuing the necessary specific provisions to make the law clear the Legislature classified the coastal waters of this State as "outside waters" and "inside waters". This was done in order that the "inside waters" could have special protection in the breeding grounds, etc., of the shrimp. The boats to be used for the various purposes in the "outside waters" and the "inside waters" are specifically defined. For example, Section 3, subparagraph (e), provides for a "Commercial Gulf Shrimp Boat".

Section 3, subsection (f), provides that a Commercial Bay-Bait Shrimp Boat is used for the purpose of taking shrimp for bait only.

Section 3, (i), "Sports Bait-Shrimp Trawl is a trawl for the purpose of taking or catching or attempting to take or catch shrimp for bait for one's own personal use."

For the purpose of reaching the conclusion herein stated we think it unnecessary to quote all of the provisions of the Act relating to the sale of shrimp, etc., but will confine our construction to Section 6, and Section 11, Article 4075b.

Section 6, subparagraph b, provides for a mesh of one (1) inch mesh or two (2) inch stretch mesh at the time such bag is new and unused, yet it carries an exception which provides, (except for catching bait shrimp as otherwise herein provided.)

The size of mesh that may be used for a "Commercial Bay-Bait Shrimp Boat" operator is specifically provided for in Section 6, paragraph (c), subparagraph (1), which reads as follows:

"It shall be unlawful for any bona fide licensed Commercial Bay-Bait Shrimp Boat operator to use in the coastal waters of this State, at any time, for the purpose of taking or catching, or attempting to take or catch, shrimp for bait more than one (1) net at a time, except for a try net not exceeding five (5) feet as measured from board to board, or to use any net exceeding in size twenty-five (25) feet measured from board to board or between the extremes of any other spreading device, or any net having a mesh size of less than one and one-half (1 1/2) inches stretched mesh at the time such net is new and unused, or to have in use or on board in the inside waters of this State during the closed season thereof more than one set of trawl doors (or other spreading device) and more than one set of try net doors." [Emphasis added]

From observing the context of this portion of the Act it is noted that a provision is made that a "Commercial Bay-Bait Shrimp Boat" operator is prohibited

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from using a mesh size of less than one and one-half (1 1/2) inches stretched mesh at the time such net is new and unused.

The shrimp industry and the Game and Fish Commission officers are well acquainted with the fact that a new and unused trawl will shrink when treated with preservatives to prevent its being sooner destroyed by the act of salt water thereon and even subjecting a non-treated net to salt water will cause shrinkage. There is no set formula by which the amount of shrinkage may be determined in the various instances in as much as all operators of shrimp trawls do not pursue the identical method of treatment, therefore, it is the clear intention of the Legislature that a one and one-half (1 1/2) inch stretched mesh at the time such net is new and unused will shrink and become a net smaller than one and one-half (1 1/2) inch stretched mesh due to shrinkage. If this were not true, the words "new and unused" would not have been used. The Legislature knew a treated net would shrink.

The Act makes it clear that shrimp may be taken by a "Commercial Bay-Bait Shrimp Boat" for bait purposes only and prohibits the sale of shrimp taken by such operator for human consumption.

We now turn to Section 11 of Article 4075b which relates to "Sports Bait-Shrimp Trawl". The full context of the Section follows:

"Section 11. It shall be lawful for any person to take or catch, or attempt to take or catch in the coastal waters of this State, bait shrimp for his own personal use by the use of Cast net, Dip net, Bait trap, or Minnow seine not larger than twenty (20) feet in length manually operated on foot only without the use of any mechanical means or devices; and it shall be lawful for any person to take or catch, or attempt to take or catch, bait shrimp for his own personal use by the use of a "Sports Bait-Shrimp Trawl" as defined herein. Provided, however, it shall be unlawful for any "Sports Bait-Shrimp Trawl" to be in the possession of any person within the coastal waters of this State, without the owner thereof having first procured a license, to be known as a Sports Bait-Shrimp Trawl License, from the Commission privileging such trawl to be used within the coastal waters of this State; provided also, that such trawl shall first have been inspected and properly tagged by the Commission and an inspection and license fee of Three Dollars (\$3) shall have been paid to the Commission, also the license provided for herein shall expire on August 31st following the date of issuance. Provided further, that it shall be unlawful for any person to use or have within his possession within the coastal waters any Sports Bait-Shrimp Trawl having a mesh smaller than one and one-half (1 1/2) inch stretch between the knots; and it shall be unlawful to use or employ doors or other boards or devices to spread or open such

trawls which are of greater size and dimensions than twelve (12) by eighteen (18) inches, or a total of two hundred and sixteen (216) square inches, provided further, that it shall be unlawful to have in possession or to use more than one (1) such trawl per boat and the distance between the doors or other boards or spreading device shall not exceed twelve (12) feet. Provided further, that it shall be unlawful for any person taking or catching, or attempting to take or catch, shrimp for his own use, under the provisions of this Act, to have within his possession more than two (2) quarts of shrimp per person, either fresh shrimp with heads on, or frozen shrimp, or both, to be used for bait purposes only, but not otherwise; provided further that any person may take or catch shrimp during the open season for his own personal use provided the catch meets the count requirements of this Act, any other provisions of this Act to the contrary notwithstanding." [Emphasis added]

An examination of Section 11 indicates that the Legislature provided that a Sports Shrimp Trawl should have a mesh not smaller than one and one-half (1 1/2) inches between the knots and it is significant to note that they failed to use the language "at the time such net is new and unused". Since both nets are for the purpose of taking bait shrimp only and since the Legislature recognized that shrinkage would occur in the mesh of trawls of the Commercial Bay-Bait Shrimp Boat, therefore, it is the opinion of this Department that it was clearly the Legislative intent to allow the same tolerance for shrinkage to a Sports Bait-Shrimp Trawl as that allowed to a Commercial Bay-Bait Shrimp Trawl.

In considering your question number 2 we examined all of the sections of House Bill 4075b, Vernon's Annotated Civil Statutes, as well as the caption of House Bill 12, supra, and we find that there is no provision for the taking of shrimp other than a try net and a trawl other than in Section 11. It provides that the taking of shrimp for one's own personal use may be lawfully taken by the use of a Cast net, Dip net, Bait trap or Minnow seine no larger than twenty (20) feet in length, manually operated on foot without the use of any mechanical means or devices. In the same Section 11 a definition is given of a "Sports Bait-Shrimp Trawl" though it appears that the only person who may lawfully take or catch shrimp by use of other than a try net and trawl are sports fishermen.

The Legislature did not see fit to specifically provide for the size mesh of a Cast net, Dip net, Bait trap or Minnow seine that may be used for a sports fisherman. Since the Legislature was dealing with the subject of taking shrimp for bait purposes only and saw fit to provide the mesh size of trawls, it is obvious that it was not intended to place a limitation on the size of mesh of the other nets and seines referred to above. This should answer your question number 2.

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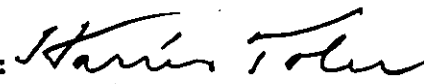
SUMMARY

(1) Article 4075b relating to the taking of bait shrimp by Sports Bait-Shrimp Trawl in which the law prohibits a mesh smaller than one and one-half (1 1/2) inches stretched between the knots intended the tolerance for shrinkage allowed trawls of Commercial Bay-Bait Shrimp Boats.

(2) Cast nets, Dip nets, Bait traps or Minnow seines are the only means other than trawls allowed for the taking of shrimp and these implements may be used only by a sports fisherman.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By:   
HARRIS TOLER  
Assistant

APPROVED:

OPINION COMMITTEE:  
W. V. Geppert, Chairman

Bill Allen  
Arthur Sandlin  
Martha Joe Stroud  
Joe McMaster

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Leonard Passmore